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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re: )  
 )  
License Renewal Application ) File No. BRCT20050801AFV  
of CBS Broadcasting Inc. )  
for WBBM-TV, Chicago, Illinois )

**CONSOLIDATED OPPOSITION TO PETITIONS TO DENY**

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December 15, 2005

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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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**PRELIMINARY STATEMENT**

CBS Broadcasting Inc. ("CBS") hereby submits its consolidated opposition to the petitions filed by Chicago Media Action ("CMA") and Third Coast Press ("Third Coast") (collectively, "Petitioners") to deny the license renewal application of WBBM-TV ("Station" or "WBBM"), along with that of every other commercial television station in the Chicago market. The petitions must be dismissed, since they fail utterly to allege any facts showing that grant of the application would be inconsistent with the public interest.

The CMA petition does not claim that WBBM has failed to cover issues of concern to the Chicago community. Rather, based on a quantitative study of local news broadcasts during the final four weeks of the 2004 campaign, it argues that the amount and type of news coverage devoted by the station to non-federal elections was not satisfactory. Though purporting to recognize that the Commission has long since eliminated quantitative guidelines for even a station's *overall* news and public affairs programming, CMA contends that the amount of WBBM's coverage of a single subject, during one four week period, mandates non-renewal.

There is no basis for this contention. The Commission has repeatedly held that “[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion.”<sup>1</sup> The amount of news coverage devoted by Chicago broadcasters to non-federal elections during one campaign – a campaign featuring the most heated presidential race in memory, but in which no major state or local office was at stake – hardly presents a case for journalistic second-guessing by the FCC.

There is even less cause for the Commission to tarry in disposing of the Third Coast petition. That filing consists of little more than broad, scatter-shot and wholly conclusory allegations about the supposed wrongs done by Chicago television stations, which are said to include bringing “systematic[ ] . . . harm to the Chicago African American community, the broader Arab and Muslim communities, and other communities of color,” as well as “using the public airwaves to express [the stations’] tacit support of elective mass destruction, civil and human rights abuses, torture and mass murder.”<sup>2</sup> The petition contains not a single example of the means by which *any* station has pursued this litany of evil, let alone any allegation concerning WBBM. It should be dismissed with dispatch.

Although allegations of the sort here presented require no factual response, we provide a few examples below of the outstanding service provided by WBBM to the Greater Chicago community.

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<sup>1</sup> See, *Applications for Renewal of Licenses of Television Stations at Denver, Colorado*, 12 Comm. Reg. (P & F) 79, 1998 FCC LEXIS 2089 (MMB 1998), *aff’d*, *McGraw Hill Broadcasting*, 16 FCC Rcd 22739 (2001) (hereafter “*Denver TV Renewals*”); *American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980).

<sup>2</sup> Third Coast Petition at 2, 10.

## ARGUMENT

### I. The Petitions Fail to Make a Prima Facie Case That Renewing WBBM's License Would be Inconsistent With the Public Interest.

Section 309 (k) of the Communications Act directs that

“the Commission *shall* grant [a station's] application [for license renewal] if it finds . . .

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.<sup>3</sup>

Here, petitioners do not allege *any* violation of the Act or rules, serious or trivial, isolated or part of a pattern or practice. Nor do their allegations set forth a *prima facie* claim that WBBM has failed to serve the public interest. Much less do the petitions raise any material question of fact in that regard.<sup>4</sup>

#### A. The CMA Petition

Based on a quantitative study of local news broadcasts, CMA contends that WBBM – and all the other television stations in Chicago – failed to give sufficient coverage to non-federal races during the closing four weeks of the 2004 campaign. CMA's claims are based on the

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<sup>3</sup> 47 U.S.C. § 309 (k) (emphasis added).

<sup>4</sup> See *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

faulty premise that any particular amount of coverage of state and local races is required for a television station to meet its public interest obligations.

As noted above, the Commission long ago eliminated its previous guidelines regarding the percentage of specified categories of non-entertainment programming that a licensee should present to serve the public interest.<sup>5</sup> Although the Commission retained the general requirement that licensees broadcast programming in response to issues of concern to their communities, it has never used a quantitative test in determining whether that obligation has been met. The issue, the Commission has emphasized, is not whether the amount of programming which a broadcaster has presented on selected issues is satisfactory to a particular interest group, but whether the overall levels of the station's issue-responsive programming are so "nominal ... as to have effectively defaulted on its obligations to contribute to the discussion of issues facing its community."<sup>6</sup>

In *Denver TV Renewals*,<sup>7</sup> the Commission considered claims based on a quantitative study similar to the one relied on by CMA here. The study purported to show that several Denver television stations devoted between 45 to 55 percent of their newscasts to stories about "crime, disasters, war and terrorism." The result, according to petitioner, was that other vital issues – such as the environment, arts, science, education, poverty, AIDS, children and local elections – were largely ignored.

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<sup>5</sup> *Report and Order in MM Docket 83-670*, 98 FCC 2d 1076, 1090-92 (1984) ("Television Deregulation"); *License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia*, 5 FCC Rcd 3847 (1990) ("*Philadelphia TV Renewals*").

<sup>6</sup> *Philadelphia TV Renewals*, *supra*, 5 FCC Rcd at 3848; *Deregulation of Radio*, 84 FCC 2d 968, 990-91 (1981); *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1414, 1431 (D.C. Cir. 1983).

<sup>7</sup> 12 Comm. Reg. (P & F) 79, 1998 FCC LEXIS 2089, *supra*, note 1.

The Mass Media Bureau categorically rejected this argument, noting that “[w]ith respect to the general issue-responsive programming obligation, the Commission has granted licensees broad discretion to choose, in good faith, which issues are of concern to the community and to choose the types of programming to address those issues.”<sup>8</sup> A petitioner challenging the reasonableness of a broadcaster’s determination of what issues to cover, the Bureau emphasized, would face a “heavy burden to show that the licensee [ ] ha[d] abused [its] discretion.”<sup>9</sup> In a two paragraph order finding the Bureau’s ruling to be “correct,” the Commission affirmed.<sup>10</sup>

Here, there can be no doubt that CMA has failed to carry its “heavy burden” of showing that WBBM’s news judgments were unreasonable. In the 2004 election, no major city or state offices – such as mayor or governor – were on the ballot. The principal non-federal offices at stake were multiple seats in the Illinois state legislature and numerous circuit judgeships.<sup>11</sup> In the context of a campaign involving one of the most hotly-contested presidential elections in our nation’s history – in which issues of war and terrorism were at the fore – it is nothing short of ludicrous to contend that every television station in Chicago should lose its license for failing, in CMA’s view, to devote enough coverage to state and local elections.<sup>12</sup>

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<sup>8</sup> 1998 FCC LEXIS 2089, at \*15. (internal quotations and citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> *McGraw Hill Broadcasting*, 16 FCC Rcd 22739 (2001).

<sup>11</sup> See, <http://chicagoelections.com/election.htm>

<sup>12</sup> Indeed, the very absurdity of CMA’s position suggests that its real concern is not the renewal applications before the Commission, but advancing a regulatory agenda. The proper forum for advocating new rules and policies, however, is a notice and comment rulemaking proceeding, not an adjudication concerning the renewal of broadcast licenses. As the Supreme Court has stated, “rulemaking is generally a better, fairer, and more effective method of implementing a new industry-wide policy than is the uneven application of conditions in isolated license renewal proceedings.” *Community*

The Commission is constrained from substituting its judgment for the stations' in this regard not only by its own policy and precedent, but by Section 326 of the Communications Act<sup>13</sup> and by the Constitution. The Supreme Court has long emphasized that "broadcasters are entitled under the First Amendment to exercise the widest journalistic freedom consistent with their public duties."<sup>14</sup> Moreover, the Court has stressed that the "public interest" standard of the Communications Act "necessarily invites reference to First Amendment principles."<sup>15</sup> Those principles narrowly limit the scope of the FCC's review of a broadcaster's journalistic decisions, even where those decisions may, in the view of some, be completely wrong-headed. As the Supreme Court has stated:

For better or worse, editing is what editors are for; and editing is selection and choice of material. That editors – newspaper or broadcast – can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values.<sup>16</sup>

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*Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (internal quotations omitted).

<sup>13</sup> That section provides:

Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

<sup>14</sup> *Federal Communications Commission v. League of Women Voters*, 468 U.S. 364, 378 (1984) (internal quotations and brackets omitted).

<sup>15</sup> *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 122 (1973).

<sup>16</sup> *Id.* at 124-25.

Adhering to these principles, the FCC has “consistently maintained that the responsibility for the selection and presentation of broadcast material ultimately devolves upon the individual station licensee, and that the fulfillment of the public interest requires the free exercise of [its] independent judgment.”<sup>17</sup>

The role that CMA would have the Commission assume in reviewing the editorial judgment of broadcasters cannot be reconciled with the requirements of the First Amendment and the Communications Act. Its petition must be dismissed.

B. The Third Coast Petition

As we have already observed, the Third Coast petition is notably long on strident rhetoric and short on specific allegations. Nonetheless, it is possible to distill several complaints from the pleading that go beyond the expression of Third Coast’s political opinions. Thus Third Coast alleges that

“News coverage from the stations systematically emphasizes the day’s police actions, crime and celebrity trivia. . . . [E]ven Chicago’s primary public TV station’s flagship nightly news and public affairs series . . . fails to adequately serve the public interest.”<sup>18</sup>

This allegation is reminiscent of the one rejected by the Commission in *Denver TV Renewals*, *supra*, except that it has even less support. Indeed, the only basis that Third Coast cites for its assertions is a nearly eight year old study of two weeks of programming by Chicago

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<sup>17</sup> *Commission Statement of Policy re: En Banc Programming Report*, 44 FCC 2303, 2309 (1960). As early as its 1949 *Report on Editorializing by Broadcast Licensees*, the Commission emphasized that it was within the discretion of licensees to determine how much time to devote to news and public affairs programming and how to present that programming. 13 FCC 1246, 1247 (1949).

<sup>18</sup> Third Coast Petition at 5.



television stations. Beyond this, Third Coast's characterizations of the findings of the study are almost wholly conclusory – the study is neither appended to the petition, nor are its findings or methodology described in any meaningful detail. It is obvious that such vague allegations do not amount to a *prima facie* basis for questioning whether WBBM has served the public interest.

Third Coast also claims that

“Local TV news in Chicago does not adequately serve the needs of African Americans and Latinos. . . . The City of Chicago is approximately 39% African American. Of all the locally produced shows which provide commentary and critique of local/national politics, none are hosted by African Americans. Also, there is a designated job of “political commentator” on most local daily news programs in Chicago and none of these commentators are African American.”<sup>19</sup>

Once again, Petitioner's allegations are wholly conclusory. No actual data concerning the employment of African-Americans or other minorities in the production of newscasts by Chicago television stations is provided; much less is any offered as to WBBM. Moreover, even Third Coast's assertions are narrowly framed so as not to allege that African Americans do not appear as anchors and reporters on Chicago's newscasts – a brief look at those programs makes plain that they do – but to isolate particular, undefined roles – such as “host” of shows providing political “commentary and critique” – which they claim are not filled by African Americans.

More fundamentally, Third Coast does not even allege violation of any Commission rule or policy. As the Commission stated in rejecting a similar claim made by the petitioner in *Denver TV Renewals*, “the EEO rules do not impose any requirements regarding the hiring of women and minorities, but only that stations engage in good faith recruitment efforts.”<sup>20</sup>

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<sup>19</sup> *Id.* at 6.

<sup>20</sup> 1998 FCC LEXIS 2089, at \*18.

In short, neither these allegations, nor Third Coast's other diffuse assertions, even approach stating a basis for denying WBBM's license renewal.

II. WBBM's News and Public Affairs Programming Has Well Served the Chicago Community.

Given the obvious failure of the petitions to allege specific facts that would raise a *prima facie* issue as to the adequacy of the issue-responsive programming presented by WBBM, there is no need for the station to present a detailed discussion of that programming here. We do note, however, that WBBM broadcasts almost 27 hours per week of local news programming; 26 weekly hours of network news programming; a weekly half-hour local public affairs program titled EYE ON CHICAGO, which focuses on politics and community issues; a weekly half-hour local program, DIFFERENT DRUMMER, addressing the practice of religion in daily life; and the network public affairs programs 60 MINUTES and FACE THE NATION. These broadcasts present ample coverage of local, national and international issues, as detailed in WBBM's quarterly issues/programs reports.

In recent months, EYE ON CHICAGO has presented interviews with Governor Rod Blagojevich (February 6, 2005 and October 16, 2005); Alderman Burton Natarus (March 6, 2005), Congresswoman Melissa Bean (April 3, 2005); Judge Anne Burke (April 10, 2005); Mayor Bill Daley (April 24, 2005); Senator Dick Durbin (May 8, 2005); Attorney General Lisa Madigan (May 8, 2005); Police Superintendent Phil Cline, Cook County State's Attorney Robert Milan (July 3, 2005); Representative Jan Schakowski (July 10, 2005); and gubernatorial

candidates Steve Rauschenbwerger (August 7, 2005) and Ron Gidwitz (August 14, 2005). As is obvious, both federal and state and local office-holders and candidates are well represented.<sup>21</sup>

In addition to their coverage of the day's events, WBBM's local news broadcasts include regular features on issues of concern to its viewers. For instance, "*Medicine Today*," a daily segment in the station's 5 PM newscast, examines trends in health care, while "*Medicine Tonight*," a twice weekly feature of the 10 PM newscasts, looks at particular health issues and problems. "*Smart Consumer*," a two-minute weekday segment on the 5 PM news broadcast, alerts viewers to safety issues, product recalls and ways to economize. And the station is renown for "*The CBS 2 Investigator*," featuring Pulitzer-prize winning journalist Pam Zekman and Dave Savini tackling issues that affect Chicagoans, recently including political corruption, charity fraud and bus safety.

In order to improve its service to outlying communities in its service area, WBBM has recently opened three news bureaus serving Naperville and DuPage Counties; McHenry and Lake Counties; and northwest Indiana.

During the 2004 election campaign, the station's political coverage featured several interviews with Democratic and Republican senatorial candidates, the sponsorship of a senatorial debate, and an approximate total of thirty minutes of free time made available to the Republican and Democratic senatorial candidates in the station's 6 PM newscast to discuss specific campaign issues.

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<sup>21</sup> The study on which CMA relies would not have taken into account any appearances of state and local candidates on EYE ON CHICAGO, since that broadcast was not included in the study. See, Center for Media and Public Affairs, *2004 Campaign News Study in Chicago, Milwaukee and Portland Markets*, at 13, Attachment B to CMA Petition.

The station's commitment to community service has been widely recognized. For instance, reporter Jim Mullen was recently honored with the California Governor's Committee Media Access Award, which recognizes outstanding journalistic efforts to increase public awareness and acceptance of people with disabilities. Other recent honors received by WBBM journalists include the American Heart Association's Women's Legacy Award, received by Medical Editor Mary Ann Childers, and recognition of reporter Suzanne LeMignot by Cook County Crime Stoppers for community education. The station itself has received the Illinois Associated Press's Award for best newscast in each of the last two years.

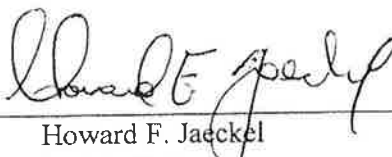
This is only the briefest overview of a few facts indicative of the quality and responsiveness of WBBM's news and public affairs coverage. It is sufficient, however, to give the lie to petitioners' baseless assertions that the station has failed to serve the public interest.

#### CONCLUSION

Both the CMA and Third Coast filings are so meritless as to constitute an abuse of the Commission's processes. Their swift dismissal would constitute an appropriate rebuke.

Respectfully submitted,

**CBS BROADCASTING INC.**

By:   
Howard F. Jaeckel  
Its Attorney

1515 Broadway  
New York, New York 10036

December 15, 2005

DECLARATION

JOSEPH AHERN, under penalty of perjury, declares and states as follows:

1. I am President & General Manager of WBBM-TV, Chicago, Illinois.
2. In that capacity, I am familiar with the facts concerning the station's record discussed in the attached "Opposition of CBS Broadcasting Inc. to Petition to Deny. (the "Opposition"). I have reviewed the Opposition and, to the best of my knowledge and belief, the statements made therein are true and correct.

  
JOSEPH AHERN

December 15, 2005

## CERTIFICATE OF SERVICE

I, Howard F. Jaeckel, hereby certify that on this 15<sup>th</sup> day of December, 2005, I caused copies of the foregoing "Consolidated Opposition To Petitions To Deny" to be served by U.S. First Class Mail, postage prepaid, on:

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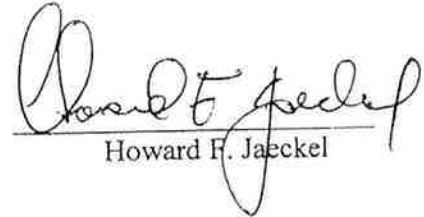
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I also certify that, on the same day, I caused said "Consolidated Opposition To Petitions To Deny" to be filed with, and served on, the following by hand delivery:

Barbara Kreisman, Chief  
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Federal Communications Commission  
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Washington, D.C. 20554

  
Howard F. Jaeckel

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, DC 20554**

In the Matter of  
Applications for Renewal of Station License of

WBBM-TV	)	
Chicago, IL	)	BRCT20050801AFV
WMAQ-TV	)	
Chicago, IL	)	BRCT20050801CEL
WLS-TV	)	
Chicago, IL	)	BRCT20050801CUZ
WGN-TV	)	
Chicago, IL	)	BRCT20050801BXY
WCIU-TV	)	
Chicago, IL	)	BRCT20050801ADO
WFLD-TV	)	
Chicago, IL	)	BRCT20050729DSN
WCPX-TV	)	
Chicago, IL	)	BRTTA20050729AGG
WSNS-TV	)	
Chicago, IL	)	BRCT20050801CFO
WPWR-TV	)	
Gary, IN	)	BRCT20050401AQB

**PETITION TO DENY RENEWAL**

Pursuant to Section 309(d)(1) of the Communications Act, Chicago Media Action<sup>1</sup> (CMA)

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<sup>1</sup>Attachment A hereto is the declaration of Mitchell Szczepanczyk, which identifies CMA's interest in these applications. CMA is an activist group dedicated to analyzing and broadening Chicago's mainstream media and to building Chicago's independent media. CMA's individual members are residents of the Chicago area and are regular viewers of television stations in the Chicago market.



respectfully submits this petition to deny renewal of the above captioned applications.<sup>2</sup> As is demonstrated below, grant of this applications is *prima facie* inconsistent with the public interest standard set forth in Section 309(a) of the Communications Act. Accordingly, these applications should be designated for hearing

## INTRODUCTION

This petition challenges the renewal of all the commercial television stations in the Chicago market. The basis of this challenge is that, singly and together, each of these stations has failed to meet the needs of their community of license and, therefore, that renewal of their licenses would not serve the public interest. Specifically, as documented below, these stations failed to present adequate programming relating to state and local elections during the 2004 election campaign. Less than 1% of newscasts was devoted to these non-federal elections in the four weeks prior to the election.

The current policies relating to license renewals were adopted in 1984. At that time, the Commission eliminated programming guidelines as to quantities of news and public affairs programming which would be presumed to constitute service in the public interest. However, in so doing, the Commission stressed that “the basic responsibility to contribute to the overall discussion of issues confronting the community is a non-delegable duty for which each licensee will be held individually accountable.” *Deregulation of Radio*, 98 FCC 1075 (1984).

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<sup>2</sup>Inasmuch as the arguments here apply with equal force to the northwestern Indiana stations which serve the Chicago market, this petition should also be treated as an informal objection to the pending renewal of station WPWR-TV, Gary, Indiana. (Had the Commission not recently granted the renewal of station WJYS, Hammond, Indiana, CMA would have filed this as an informal complaint in that docket as well.)

Attachment B hereto is a study prepared by the Center for Media and Public Affairs (CMPA).<sup>3</sup> ) - ?

CMPA was commissioned to analyze all regularly scheduled news programming and public affairs programming carried by the five highest-rated commercial stations<sup>4</sup> in Chicago for the four weeks prior to the November, 2004 election. This programming represented substantially all of the regularly scheduled locally produced news available in Chicago.<sup>5</sup> Additional information on the methodology and data collection for the study is contained in Attachment C, the declaration of Meredith McGhehee, Director of the Media Policy Program of the Campaign Media Legal Center.

As Ms. McGhehee explains, trained volunteers taped the programming,<sup>6</sup> which was provided to CMPA for analysis using coding methodology which employs numerous statistical and other controls to assure completeness and accuracy of its analysis.<sup>7</sup> She continues:

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<sup>3</sup>CMPA is a nonpartisan research and educational organization which was founded in 1985 and conducts scientific studies of the news and the entertainment media.

<sup>4</sup>WLS-TV, WBBM-TV, WFLD, WMAQ-TV and WGN.

<sup>5</sup>The remaining stations challenged carried no regularly scheduled locally-originated news programming or merely rebroadcast newscasts produced by another station.

*specifics* <sup>6</sup>Between 93 and 99 percent of targeted programming was recovered, assuring a high degree of statistical reliability.

<sup>7</sup>As CMPA explains on its website,

Categories and criteria are rigorously defined and applied consistently to all material. Each system must be reliable, meaning that additional researchers using the same criteria should reach the same conclusions. Because it is both systematic and reliable, content analysis permits the research to transcend the realm of impressionistic generalizations, which are subject to individual preferences and prejudices.

CMPA researchers have honed their skills on a wide variety of projects since 1987, making them among the best trained and most experienced at news media content analysis. Researchers examine news stories on a statement-by-statement level, recording all overt opinions expressed by either the reporter or other individuals quoted in the story. Each opinion is catalogued according to the source of the comment, the target, and the issue under discussion.

*CMPA never heard of them*

The data show clearly a lack of news coverage of the 2004 election by the five highest rated Chicago stations and illustrate that there was a market-wide failure to provide voters in the Chicago viewing area with the information they needed about local races to be the informed voters essential to a healthy, working democracy.

Specifically, the data show that only 7.8% of total newscast time was devoted to elections in the four weeks prior to a major election, and that the U.S. Presidential and U.S. Senate races accounted for 79% of that coverage. All other Illinois contests together counted for approximately 8% of the election news coverage. This is well under 1% of the total time devoted to news on the stations on the five monitored stations.<sup>8</sup>

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Researchers do not assign overall positive and negative scores to entire stories, since such an approach is inherently subjective and fails to fully account for the nuances within each story. Individual statements are logged into a computerized database, allowing statistical analyses to fully describe the relationships among news sources, time periods, the focus of coverage and the tone of coverage.

Depending on the length and breadth of the study, CMPA's codebooks (which contain the categories and rules for coding) range from 100 to 300 pages long and include 20 to 50 different analytic variables. Research assistants are trained for between 150 and 200 hours before they begin work on a project. During the training process, researchers code sets of stories, and their work is compared to that of previous coders until a minimum reliability level of 80% is reached for all variables. That means that the new coders must reach the same conclusions as their counterparts at least four out of five times. For most variables, the level of agreement is much higher.

<http://www.cmpa.com/ourMethodology/index.htm>

<sup>8</sup>To examine whether information about non-Presidential races were made available on the national news programming, volunteers also examined national news programming aired during the two weeks leading up to Election Day. That analysis of 132 hours of national news and public affairs programming that aired on ABC, CBS, NBC and Fox networks found that 92% of the election coverage aired on national networks was devoted to the presidential contest, with 81.6% of the candidate soundbites coming from the presidential candidates. Candidate soundbites for U.S. Senate candidates constituted 0.4%, for U.S. House 1.2% and for other candidates 0.3%. Two percent of stories examined ballot initiatives and referenda, and slightly less than 2% were devoted to U.S. Senate or House races. The remaining stories were devoted to voting issues not specific to any particular race (like absentee ballots or voting machines). All told, the national networks devoted about 30 hours to local elections news – approximately one-fifth of their news hole. However, the majority of coverage focused on the horse race of the candidates' campaign strategies rather than

Analysis of the content of the election coverage demonstrates that qualitative factors make the picture even worse. CMPA reports that the dominant frame in Chicago coverage (one third of all election coverage) was the strategic element of campaign and campaign activities, and that “horse race coverage” was 18% of time devoted to campaign news. While these are certainly newsworthy, fully half of the news coverage did not inform voters about issues or other facts which actually assist them in voting or in deciding for whom to vote. Moreover, only 15% of the news coverage was devoted to carriage of candidates speaking on behalf of themselves, and the average candidate soundbite was 10.2 seconds long.

There was also a modicum of campaign coverage outside of news programming.<sup>9</sup> This programming tended to follow the same pattern. In particular, more than half of election related discussion on WFLD’s *Chicago Perspective* was devoted to “horse race” and strategic matters. There was, however, more discussion of issues - about one-third of the programming.

### LEGAL ANALYSIS

The Commission cannot grant a license renewal without hearing unless it determines, based on the available information, that the applicant has met its burden of establishing that grant is in the public interest. 47 USC §309. If, as here, a petition to deny raises substantial and material questions of fact as to whether grant of the application is in the public interest, the Commission must designate the matter for hearing. *Id.*

Localism (along with diversity and competition) is one of the three basic elements of the

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issues.

<sup>9</sup>This petition does not address advertising. Such programming is no substitute for news or public affairs coverage conducted by journalists. Indeed, under Section 315(a) of the Communications Act, licensees have no discretion whatsoever as to the content of candidate “uses.”

Commission's public interest analysis of broadcast applications. *See NBC v. U.S.*, 319 U.S. 190, 203 (1943) ("Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community ...."). Section 307(b) of the Communications Act assures that licenses are distributed with regard to assuring localism. *See FCC v. Allentown Broadcast Corp.*, 349 U.S. 358, 362 (1955) (upholding authority to distribute licenses "to a community in order to secure local competition for originating and broadcasting programs of local interest."); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 139 (1940) (renewal not in the public interest where "applicant did not sufficiently represent local interests in the community."). Localism has been reaffirmed legislatively on countless occasions; *MPAA v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (upholding power to promote localism). *See, e.g.*, H.R. Rep. 104-104 (1996) ("[Localism] is a vitally important value ... [and] should be preserved and enhanced as we reform our laws for the next century."); Pub. L. 102-385 §§2(a)(10-11) (substantial governmental interest in ensuring localism and local program origination and "broadcast television stations continue to be an important source of local news and public affairs programming ... critical to an informed electorate.").<sup>10</sup>

CMA recognizes that the Commission has afforded broadcasters wide discretion in determining how to meet the needs of their communities. However, the paucity of coverage of local elections available to Chicago area voters cannot be reconciled with the localism which the Communications Act demands. The failure to provide such coverage is a gross abuse of discretion which is incompatible with the broadcasters' most fundamental obligations to the public and absolutely precludes grant of renewal without exploration at a hearing.

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<sup>10</sup>The Commission has recently reaffirmed its commitment to localism. *See, 2002 Biennial Review*, 18 FCCRcd 13620, 13643-44 ¶¶73-77, *rev'd on other grounds sub nom. Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (*citing NBC v. U.S.*, *supra*).

“It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). From the standpoint of the citizenry, their single most important need is access to information from and about candidates for public office.

The FCC itself has stressed the importance of political broadcasting many times.

In one statement, it said:

In short, the presentation of political broadcasting, while only one of the many elements of service to the public ... is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate--in turn so vital to the proper functioning of our Republic. *Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968).

*Political Primer*, 100 FCC2d 1476 (1984). Because freedom of speech is valuable not only as a personal liberty but also for the role it plays in the proper functioning of our entire democratic form of government, the Supreme Court has repeatedly recognized that the First Amendment “‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Eu v. San Francisco Democratic Committee*, 489 US 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 US 265, 272 [1971]); *Mills v. Alabama*, 384 US 214, 218 (1966) (“[T]here is practically universal agreement that a major purpose of th[e First] Amendment was to protect the free discussion of governmental affairs.”); *Garrison v. Louisiana*, 379 US 64, 74-75 (1964) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.”).

Moreover, in 1984, the Commission made plain that, in giving greater discretion to TV broadcasters in meeting their programming obligations, it did “not constitute a retreat from our concern with the programming performance of television station licensees.” *TV Deregulation*, 98 FCC2d 1075

(1984).<sup>11</sup> It emphasized that the fact that a broadcaster carries some issue responsive programming is not dispositive, and that the Commission will conduct an “ad hoc review” to look into well-pleaded allegations of insufficiency to determine “whether the challenged licensee acted reasonably in choosing the issues it addressed in its programming...,” and that “the burden will be on the licensee to demonstrate that the exercise of discretion was appropriate in the circumstances.” *Id.* See also, *UCC v. FCC*, *supra*, 707 F.2d at 1434 (“Quantity of programming remains ...a factor that the Commission may choose to deemphasize, but may not ignore altogether.”); *Television Deregulation (Reconsideration)*, 104 FCC2d 358, 362-3 n.8 (“Our decision ... cannot be reasonably read to have rendered quantity irrelevant.”).

## CONCLUSION

CMA has established a fundamental marketplace failure in the coverage of what is arguably the most important kind of programming in a modern democracy - coverage of local elections. It is impossible to find that Chicago TV stations have fulfilled their public interest obligation singly, or taken together. Accordingly, the Commission must grant this petition, designate the above-captioned applications for hearing, and grant all such other relief as may be just and proper.

Respectfully submitted,

Andrew Jay Schwartzman

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<sup>11</sup>In affirming the Commission’s radio programming policies, the Court of Appeals stressed that “[t]his power to license in the public interest ... necessarily entail[s] the power to license on the basis of program service.” *UCC v. FCC*, 707 F.2d 1413, 1428 (D.C. Cir. 1983).

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